In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-23

JOHN ALEXANDER WOMACK &
JAMES ANDREW ROBINSON, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

In March 1971, at Chicago, Illinois, petitioners were called as witnesses before a grand jury investigating interstate gambling. They refused to testify on grounds of self-incrimination (Pet. 7-8). Subsequently, in May 1971, they were given immunity under 18 U.S.C. 2514 and ordered to testify. Upon their continued refusal, they were adjudged in civil contempt on May 25, 1971, and ordered committed. Bail pending appeal was denied. Appeal from the

commitment order and denial of bail was expedited. On June 17, 1971, the court of appeals denied all requested relief (Pet. 11-12, Pet. App. 1-5). On July 6, 1971, Mr. Justice Marshall denied bail pending the filing and determination of a petition for a writ of certiorari.

Petitioners contend essentially that 18 U.S.C. 2514, under which they were granted "transactional immunity," is no longer valid because a subsequent statute, passed in 1970, which permits the government to grant more limited "use immunity," 18 U.S.C. 6002, has, in effect, repealed the "transactional immunity" statute.[1] Congress, however, specifically provided that the repeal of the "transactional immunity" statute is to become effective four years after the effective date of the 1970 "use immunity" statute. Section 227 of the Organized Crime Control Act of 1970, P.L. 91-452, 84 Stat. 930. The explicit purpose of continuing the "transactional immunity" statute in effect for this period is to prevent delays in the enforcement of the criminal laws due to recalcitrant witnesses while the constitutionality of the "use immunity" statute is challenged in the courts. See Hearings on S. 30 (*inter alia*) Before the Subcommittee on Criminal Laws and Procedures of the

---

[1] The "transactional immunity" statute, 18 U.S.C. 2514, provides immunity from prosecution, for "any transaction, matter or thing concerning which" the witness is compelled to testify, in a broad, enumerated class of cases, including gambling offenses. Pet. 5-6. The "use immunity" statute, 18 U.S.C. 6002, provides immunity, in criminal cases generally, against use of testimony or any leads derived therefrom. Pet. 4.

Senate Committee on the Judiciary, 91st Cong., 1st Sess., 403-404 (1969). There is no serious basis, as the court of appeals below held (Pet. App. 2-3), on which to question the propriety of this action by Congress. Indeed, "[i]t is a cardinal principle of construction that repeals by implication are not favored. When there are two acts upon the same subject, the rule is to give effect to both if possible." *United States* v. *Borden Co.*, 308 U.S. 188, 198.[2]

In this case, at all events, since petitioners have been given the broader immunity under the old statute, they cannot complain because the narrow immunity under the new statute was not applied to them. Nor have petitioners advanced any new considerations in support of their request that this Court reexamine the settled principle that "transactional immunity" is constitutionally valid. See *Reina* v. *United States*, 364 U.S. 507; *Ullmann* v. *United States*, 350 U.S. 422; see also *DiDomenico* v. *United States*, 420 F. 2d 1201, 1203 (C.A. 7), certiorari denied, 397 U.S. 1021; *Carter* v. *United States*, 417 F. 2d 384, 387 (C.A. 9), certiorari denied, 399 U.S. 935.

---

[2] The validity of the "use immunity" statute is pending before the Court in *Kastigar* v. *United States*, No. 70-117, certiorari granted, May 17, 1971. See also *United States* v. *Korman and Likas*, pending on petition for certiorari, No. 70-303. In *Korman and Likas*, the Seventh Circuit declared "use immunity" under 18 U.S.C. 6002 unconstitutional. In light of that ruling, the grant of transactional immunity here, to expedite the investigation, is thus consistent with Congress' express intent.

CONCLUSION

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

AUGUST 1971.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1971 440606 80